

**TESTIMONY OF MITCHELL W. PEARLMAN
CONERNING SENATE BILL 1009
JOINT COMMITTEE ON GOVERNMENT ADMINISTRATION AND ELECTIONS
2011 SESSION OF THE CONNECTICUT GENERAL ASSEMBLY
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My name is Mitchell Pearlman and, until my retirement, I served as executive director and general counsel of the Connecticut Freedom of Information Commission for over 30 years. In 2005, I was also appointed by the Governor and the legislative leadership to oversee the creation of the then new Office of State Ethics. I now teach law and journalism at the University of Connecticut and am an advisor and consultant to governments in the United States and abroad on good governance issues, including transparency, ethics, conflicts of interest and whistleblowing laws.

Senate Bill 1009, "An Act Creating the Office of Governmental Accountability," would merge five independent government "watchdog" agencies into a single super-sized agency to be called the Office of Government Accountability (OGA). Every Governor since Bill O'Neill has suggested similar, superficially appealing legislation. But when those bills were finally aired in public, their superficiality became apparent. They were defeated because they would create a more expensive bureaucracy, result in less rather than more transparency and accountability, and effectively dismantle some of the best and most well-regarded agencies of state government.

The five agencies to be merged under this year's version of the watchdog consolidation bill are the Freedom of Information Commission (FOIC), the Office of State Ethics (OSE), the Elections Enforcement Commission (EEC), the Judicial Review Council (JRC) and the State Contracting Standards Board (SCSB). They have absolutely no common areas of responsibility, although each is charged with keeping an eye on a distinct element of government activity.

Unless the intent of this bill is to gut the principal government oversight functions currently performed by the five agencies involved, the merger of these agencies will not eliminate any front-line or supervisory staff positions because each operating division within the new agency will continue to require a high degree of specific technical expertise and leadership that simply does not correspond or overlap with that of the staffs of the other operating divisions. On the other hand, the OGA creates an unnecessary, yet expensive, additional top level of bureaucracy to lord over each of the former agencies. This level will include a new executive director as department head, and undoubtedly one or more deputies and administrative support staff. All this will easily cost hundreds of thousands of dollars extra for salaries, space and office furniture.

In addition, the merger will necessitate an expensive new integrated computer system that will have to be programmed with sophisticated external and internal "firewalls" to simultaneously guarantee the confidentiality of the highly sensitive information kept by the OGA's separate operating divisions, while ensuring that their public records are readily available on request under the state's Freedom of Information Act. This could well add a million or more dollars to the cost of the proposed agency.

(over)

Substantively, the FOIC is the only body that enforces the state's open government laws. The laws governing all the other agencies to be included in the OGA mandate a significant degree of secrecy and confidentiality. So if a citizen brings a Freedom of Information case against the other divisions of the OGA, the Freedom of Information division must adjudicate the matter. There have been, and continue to be, such cases brought against some of the other agencies involved in the proposed merger.

Similarly, the OSE enforces the state's code of ethics for state officials and employees. Thus, the ethics division of the OGA would be responsible for detecting and investigating ethical lapses by the officials and employees of the other divisions of that agency. It will look highly suspicious to the citizens of the state when one division of the consolidated agency is called on to adjudicate the actions of the other divisions.

Finally, and perhaps most crucially, the proposed bill would make the executive director of the OGA a political appointee – that is, one who serves solely at the pleasure of the Governor and who can be fired summarily without cause, simply because the Governor does not like a decision of the OGA. Currently, with the exception of the SCSB, the executive directors of the other agencies are appointed by their respective boards based on established professional qualifications. Their performance is evaluated by their respective boards and they cannot be fired for political or other improper reasons. They can be fired only upon a showing of good cause.

Without such protections, every person who accepts the job of executive director of the OGA would know that they risk losing their job if they permit any decision that embarrasses the Governor or if they blow the whistle on any OGA board or staff member who decides a matter on the basis of political or other inappropriate considerations. I suspect that very few people are in a position to accept such a risk.

Sometimes bigger is better and cost effective. Sometimes it isn't. This is one instance where bigger is neither better nor cost effective.

Governor Malloy has pledged to set a course for greater transparency and accountability in his administration. Unless that pledge is a hollow one – and I sincerely believe that it is not – a thoughtful and objective evaluation of the arguments presented here should convince both the Governor and the members of this committee that the proposed merger of the principal government watchdog agencies would be both costly and a public policy disaster of the first magnitude. It would unnecessarily create a new, ill-conceived bureaucracy that the state can hardly afford. And tragically, it will destroy the FOIC, EEC and the recently created OSE as effective and credible agencies of good governance.

Since the mid-1970s when the FOIC, EEC and the predecessor of the OSE were first created, this committee has been the staunch guardian and protector of their independence from political interference. Once again, you are being called upon to do the same. Please preserve the independence of these agencies by acting unfavorably on this bill.

Thank you.